

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 902 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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GITABEN C DAXINI

Versus

UNITED CO.OPERATIVE BANK  
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Appearance:

MR PRASHANT G DESAI for Petitioners  
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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 04/12/2000

ORAL JUDGEMENT

Dr. Gitaben C. Daxini and others-petitioners  
(original defendants) have filed this revision  
application challenging the order dated 31.8.2000 passed  
by the learned Judge, City Civil Court, Ahmedabad,  
wherein the court was pleased to direct issuance of  
Jamgam Warrant against judgement debtors returnable on

14.9.2000.

2. The facts giving rise to this application are as under:

2.1 United Commercial Bank-original plaintiff respondent herein has filed Summary Suit No. 3800 of 1980 against the defendants-petitioners herein and other three persons inter alia praying to recover the amount of Rs. 47,338.09 ps with interest. The City Civil Court, Ahmedabad, vide judgement and decree dated 7.5.1984 was pleased to dispose of the said suit and directed the defendants-petitioners to pay the amount dues to the bank by equal monthly instalment of Rs. 800/- commencing from 1.4.1984 and has also further directed that in case the defendants commit default in making payment of any of the three instalments, the plaintiff shall be at liberty to recover the balance amount covered under the decree. A copy of the said judgement and decree dated 7.5.1984 has been produced in this revision application.

2.2 From the record it appears that after the aforesaid decree was passed by the City Civil Court, the defendants (petitioners herein) have committed default by not paying the amount of three instalment from 1.4.1984 to 1.6.1984. Thereafter, the defendants submitted an application for restoration being Application No. 93 of 1986 before the City Civil Court. The City Civil Court by its order dated 31.8.1987 was pleased to reject the said application.

3. It appears that thereafter the defendants have paid Rs. 1,06,000/- to the plaintiff bank. Thereafter, the plaintiff bank has filed Execution Application No. 235 of 1997 before the City Civil Court, Ahmedabad, for execution of the aforesaid decree passed by the City Civil Court in Summary Suit No. 3800 of 1984. The defendants appeared before the Executing Court and filed their written reply at Exh. 29 and have objected to the execution proceedings.

4. Before the Trial Court, the learned advocate, on behalf of the judgement creditor, has stated that judgement debtors have made payments on 7.8.1984, 12.9.1984, 16.11.1984, 1.2.1985 and 1.6.1985. The learned judge therefore observed that judgement creditors condoned the act of judgement debtors in making irregular payments till 1.6.1985. The learned judge therefore observed that the judgement debtors cannot take advantage of their own wrong. It was further observed that the fact remains that such condonation occurred within the

period of 12 years. In view of the same, the learned judge rejected the contention of the judgement debtors and allowed the application filed by the judgement creditors and directed issuance of jangam warrant against the judgement debtors. The learned counsel for the defendants submitted that as per Article 136 of the Limitation Act, limitation period starts from the date of decree and therefore the entire darkhast is time barred. The learned counsel also submitted that the learned judge has erred in holding that since the petitioners-defendants have made payment upto 1.6.1985, the limitation period would begin from the said date.

5. I have considered the submission made by the learned counsel. I have also gone through the case records and order of the learned judge in this behalf. In my view there is no substance in the contention raised by the learned advocate for the petitioners-original defendants. In my view the order of the learned judge, City Civil Court, Ahmedabad, dated 31.8.2000 is perfectly legal and valid and I do not see any reason to interfere with the same. The revision application is therefore required to be rejected and it is rejected accordingly. No order as to costs.

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